

Kapke, Kara

From: David J. Stanoch <d.stanoch@kanner-law.com>
Sent: Friday, March 11, 2022 4:49 PM
To: Kapke, Kara; Nicholas Migliaccio; Geman, Rachel; cgeddis@mazieslater.com; mgriffith@mazieslater.com; Adam Slater
Cc: valpec@kirtlandpackard.com; Richer, Kristen; Johnston, Sarah; Mark Patronella
Subject: [EXTERNAL]RE: Dismissal of CVS in MMMC

Dear Kara,

As promised, we write in response to your request that CVS be dismissed from the operative Medical Monitoring Class Complaint. You base your request on your contention that there are only two existing medical monitoring class representatives, Ms. Cotton and Ms. Silberman, who allege purchases from CVS, and that neither of these individuals have “live medical monitoring claims against CVS in the [Medical Monitoring Class Complaint].” Kapke Feb. 17, 2022, Ltr. at 3. This request, of course, comes after we previously agreed to voluntarily dismiss certain other named plaintiffs. We decline your request to dismiss CVS from the Medical Monitoring Complaint at this time.

As to Ms. Cotton, a Texas resident, you contend that plaintiffs do not assert any claims under Texas law against Retail Pharmacy Defendants (including CVS) in the Medical Monitoring Complaint. This is not entirely accurate. As you know, both sides filed objections to Special Master Vanaskie’s ruling on plaintiffs’ motion for leave to file amended complaints. Plaintiffs partially objected to the extent that ruling disallowed pleading negligence claims or implied warranty claims under certain states’ laws (including Texas) against Retail Pharmacy Defendants, including CVS. *See* 1694. All parties’ objections, including Plaintiffs’ partial objection, remains pending. It would be inappropriate to dismiss CVS while the objections remain pending. This remains true even if, as you assert in your letter, Plaintiffs have chosen not to seek certification of a sub-class against Retail Pharmacy Defendants under Texas law at this time in connection with the claims asserted in the Medical Monitoring Complaint as it currently stands. (There are other sub-classes asserted under Texas law against other tiers of Defendants).

As to Ms. Silberman, you claim that, even though CVS and Ms. Silberman have produced CVS records demonstrating her valsartan purchases in New Jersey, she really purchased valsartan “at a pharmacy within a Quick Chek grocery store and never received valsartan from a CVS store.” Kapke Feb. 17, 2022, Ltr. at 2. Our understanding is that CVS acquired the Quick Chek pharmacies. As a successor entity, CVS is responsible for the assets and liabilities of a predecessor entity, a fact made clear by CVS’s own production of “CVS” branded records showing Ms. Silberman’s valsartan purchases. *Cf. In re LTL Mgmt., LLC*, -- B.R. --, 2002 WL 5966617, at *15-*19 (Bankr. D.N.J. Feb. 25, 2002) (discussing transfer of corporate assets and liabilities).

Given the above (and without waiver of any additional arguments or positions), we decline your request to dismiss CVS from the Medical Monitoring Class Complaint at this time.

Regards,
Dave

David J. Stanoch
Kanner & Whiteley, L.L.C.
701 Camp Street
New Orleans, LA 70130
(504) 524-5777
www.kanner-law.com

From: David J. Stanoch
Sent: Tuesday, March 8, 2022 4:25 PM
To: Kapke, Kara <Kara.Kapke@btlaw.com>; Nicholas Migliaccio <nmigliaccio@classlawdc.com>; Geman, Rachel <rgeman@lchb.com>; cgeddis@mazieslater.com; mgriffith@mazieslater.com; Adam Slater <aslater@mazieslater.com>
Cc: valpec@kirtlandpackard.com; Richer, Kristen <Kristen.Richer@btlaw.com>; Johnston, Sarah <Sarah.Johnston@btlaw.com>
Subject: RE: Dismissal of CVS in MMMC

Kara,
We will respond prior to the next CMC. Regards, Dave

David J. Stanoch
Kanner & Whiteley, L.L.C.
701 Camp Street
New Orleans, LA 70130
(504) 524-5777
www.kanner-law.com

From: Kapke, Kara <Kara.Kapke@btlaw.com>
Sent: Tuesday, March 8, 2022 1:12 PM
To: David J. Stanoch <d.stanoch@kanner-law.com>; Nicholas Migliaccio <nmigliaccio@classlawdc.com>; Geman, Rachel <rgeman@lchb.com>; cgeddis@mazieslater.com; mgriffith@mazieslater.com; Adam Slater <aslater@mazieslater.com>
Cc: valpec@kirtlandpackard.com; Richer, Kristen <Kristen.Richer@btlaw.com>; Johnston, Sarah <Sarah.Johnston@btlaw.com>
Subject: Dismissal of CVS in MMMC

Counsel: I write again to follow up regarding our request that CVS be dismissed from the medical monitoring complaint. As I explained at the last CMC, we're not trying to engage in premature dispositive motion practice. Rather, there simply are not any claims against CVS in the medical monitoring complaint anymore, and we haven't heard from you with any basis for plaintiffs to proceed with medical monitoring claims against CVS. Judge Vanaskie didn't rule out issuing an order to show cause at the next CMC, but I'm hoping we can avoid that or the need for further briefing. Could you please advise?

Kara M. Kapke | Partner

Mobile (317) 509-9545 | Fax (317) 231-7433
Direct (317) 231-6491 | Twitter @KaraKapke
<http://www.btlaw.com/kara-kapke/>
she/her/hers



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Ohio | Raleigh | Salt Lake City | Texas | Washington, D.C.

From: Kapke, Kara

Sent: Wednesday, February 23, 2022 11:46 AM

To: David J. Stanoch <d.stanoch@kanner-law.com>; Nicholas Migliaccio <nmigliaccio@classlawdc.com>; Geman, Rachel <rgeman@lchb.com>; Springer, Alice <alice.springer@btlaw.com>; 'cgeddis@mazieslater.com' <cgeddis@mazieslater.com>; 'mgriffith@mazieslater.com' <mgriffith@mazieslater.com>

Cc: valpec@kirtlandpackard.com; Richer, Kristen <Kristen.Richer@btlaw.com>; Johnston, Sarah <Sarah.Johnston@btlaw.com>

Subject: FW: Letter from K. Kapke to PEC re Dismissal of CVS in MMMC.docx

Counsel: I'm following up on my letter below, requesting dismissal of CVS from the Medical Monitoring Complaint.

Kara M. Kapke | Partner

Mobile (317) 509-9545 | Fax (317) 231-7433
Direct (317) 231-6491 | Twitter @KaraKapke
<http://www.btlaw.com/kara-kapke/>
she/her/hers



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Ohio | Raleigh | Salt Lake City | Texas | Washington, D.C.

From: Kapke, Kara

Sent: Thursday, February 17, 2022 1:43 PM

To: David J. Stanoch <d.stanoch@kanner-law.com>; Nicholas Migliaccio <nmigliaccio@classlawdc.com>; Geman, Rachel <rgeman@lchb.com>; Adam Slater <aslater@mazieslater.com>; 'cgeddis@mazieslater.com' <cgeddis@mazieslater.com>; 'mgriffith@mazieslater.com' <mgriffith@mazieslater.com>

Cc: Richer, Kristen <Kristen.Richer@btlaw.com>; Johnston, Sarah <Sarah.Johnston@btlaw.com>; Behrens, Beth <Beth.Behrens@btlaw.com>; valpec@kirtlandpackard.com

Subject: Letter from K. Kapke to PEC re Dismissal of CVS in MMMC.docx

Counsel:

Please see attached letter requesting dismissal of CVS from the Medical Monitoring Complaint. A proposed order that follows the template used for Walgreens and Rite Aid is also attached for your convenience.

Please let me know if you have any questions.

Thanks,
Kara

Kara M. Kapke | Partner

Mobile (317) 509-9545 | Fax (317) 231-7433
Direct (317) 231-6491 | Twitter @KaraKapke
<http://www.btlaw.com/kara-kapke/>

she/her/hers



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